

Appendix of Forms

Sample 4

Pretrial Order in a Non-Admiralty Case

PLAINTIFF'S ATTORNEY

Firm Name
Mailing Address or residence if no office is maintained
City, State, 9-digit Zip Code
Area Code and Telephone Number
Facsimile Telephone Number
Internet E-mail Address
Oregon State Bar ID Number

DEFENDANT'S ATTORNEY

Firm Name
Mailing Address or residence if no office is maintained
City, State, 9-digit Zip Code
Area Code and Telephone Number
Facsimile Telephone Number
Internet E-mail Address
Oregon State Bar ID Number

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SALLY Q. SPECULATOR,

Plaintiff,

v.

Civil No: CV 98-0345-MA

**PAUL PUTTER, and BLUE SKY
SECURITIES, INC., an Oregon
corporation**

PRETRIAL ORDER

Defendants.

The following pretrial order is lodged pursuant to LR 16.6.

1. NATURE OF THE ACTION

Plaintiff alleges six claims: securities fraud in violation of federal (15 U.S.C. § 78(j)(b)) and state (ORS 59.135) securities laws, common law negligence, and common law breach of fiduciary duty. Trial will be to a jury, and the parties have consented to trial and entry of judgment by a magistrate judge.

2. SUBJECT MATTER JURISDICTION

This court has jurisdiction over the federal securities claims pursuant to 15 U.S.C. § 78aa, and pendent jurisdiction over the common law claims and the Oregon statutory claims.

3. AGREED FACTS

[List all agreed facts, marking those with an asterisk that are agreed to but disputed as to relevance.]

4. CLAIMS AND DEFENSES

CLAIM ONE

Violation of Federal Securities Laws

(A) Plaintiff contends:

(1) Churning:

- (a)** Putter conducted trades in plaintiff's accounts at a rate which he knew was excessive in light of plaintiff's investment objectives, which were preservation of capital and dividend income.
- (b)** Putter and Blue Sky Securities intentionally traded aggressively and excessively to generate funds for themselves, or at the very least, conducted excessive trades in willful and reckless disregard of plaintiff's interests.

- (c) The excessive trades resulted in unwarranted or unnecessary commissions and mark-ups produced for the benefit of defendants, together with a diminution in the value of plaintiff's portfolios, all to her damage in the amount of \$[specify amount].

Defense

(B) Defendants contend:

- (1) Defendants deny plaintiff's contentions.
- (2) Plaintiff knew or should have known of the alleged wrongful conduct more than two years prior to commencement of this action.
- (3) Plaintiff has voluntarily and intentionally waived the right to pursue her claims. Plaintiff was fully and timely informed of all transactions. She did not object to any transaction or series of transactions and she continued to instruct, approve, and allow defendants to enter into transactions.
- (4) Plaintiff is estopped from asserting her claims because she acted with knowledge of the facts regarding the transactions; she acted in such a way that defendants justifiably believed the transactions were approved; defendants relied on plaintiff's repeated acceptance of both the transactions and of defendants' performance and, thus, continued to enter into similar transactions.
- (5) Plaintiff cannot complain of defendants' conduct because, with knowledge of the material facts, plaintiff accepted and/or approved the transactions made for her on behalf of defendants.

- (6) Plaintiff cannot recover any part of her loss, if there was one, caused by plaintiff's own failure (once plaintiff had reason to know of the matters of which plaintiff complains) to take reasonable steps to avoid further harm.

CLAIM TWO

Suitability

(C) Plaintiff contends:

- (1) Contrary to plaintiff's conservative and prudent investment objectives, defendants exchanged plaintiff's conservative portfolio of securities for speculative securities involving high risk and little or no dividend income.
- (2) Substantially all of the securities the defendants placed plaintiff into were held in their inventories and many were securities for which Blue Sky was a market maker. Transactions in these securities generated higher profits for the defendants than they would have received had defendants made more suitable, conservative trades on behalf of plaintiff.
- (3) Defendants intentionally placed plaintiff in unsuitable trades to increase their own profits, or at the very least, acted with reckless disregard for plaintiff's interest in making unsuitable investments.

- (4) The unsuitable investments resulted in excessive and unnecessary commission, decline in the value of plaintiff's portfolios, and loss of dividend income, all to her damage in the amount of \$[specify amount]. These damages are in the alternative, and not in addition, to the damages alleged in Claim One.

Defense

(D) Defendants contend:

- (1) All of the same defenses as alleged under Claim One.

CLAIM THREE

Unauthorized Trades

(E) Plaintiff contends:

- (1) Defendant Putter made trades on behalf of plaintiff without authority to do so. Plaintiff neither authorized nor ratified such trades, which defendant Putter made with willful or reckless disregard of plaintiff's interests.
- (2) The unauthorized trades resulted in improper commissions and diminution in the value of plaintiff's portfolios, all to her damage in the amount of \$[specify amount]. These damages are in the alternative, and not in addition, to the damages alleged in Claims One and Two.

Defense

(F) Defendants contend:

- (1) All of the same defenses as alleged under Claim One.

CLAIM FOUR

Fraudulent Concealment

(G) Plaintiff contends:

- (1) Plaintiff did not know, and reasonably should not have known, of the excessive, unauthorized, or unsuitable trading more than two years before commencement of this action.
- (2) Defendants concealed the excessive and unsuitable trading from plaintiff by failing to disclose plaintiff's falling stock and portfolio values, by giving plaintiff inaccurate information and misquotes of the value of various stocks in plaintiff's portfolios, by generating a flurry of unnecessary trades to divert attention from and confuse plaintiff about the true value and character of their trading losses, and destroying or making unavailable for discovery relevant documents concerning facts underlying plaintiff's claims.
- (3) Plaintiff seeks damages as alleged in Claims One, Two, and Three. These damages are in the alternative, and not in addition, to the damages alleged in Claims One, Two, and Three.

Defense

(H) Defendants contend:

- (1) All of the same defenses as alleged under Claim One.

CLAIM FIVE

Breach of Fiduciary Duty

(I) Plaintiff contends:

- (1) Defendants owed plaintiff a fiduciary duty to handle her stock transactions in plaintiff's best interests. Defendant Putter dominated plaintiff, and effectively handled plaintiff's portfolios as discretionary accounts, and traded speculative stocks, knowing that plaintiff was not in a position to evaluate the wisdom of those trades.
- (2) By making, or allowing to be made, excessive, unauthorized, or unsuitable trades on behalf of plaintiff, defendants breached their fiduciary duty to plaintiff. That breach resulted in improper commissions and diminution in the value of plaintiff's portfolios.
- (3) Plaintiff seeks compensatory damages as alleged in Claims One, Two, Three, and Four, and punitive damages in the amount of **[\$specify amount]**. The compensatory damages sought are in the alternative, and not in addition, to the damages alleged in Claims One, Two, Three, Four, and Five. The punitive damages are in addition to the damages asserted in the other claims.

Defense

(J) Defendants contend:

- (1)** All of the same defenses as alleged under Claim One.
- (2)** In addition, defendants allege plaintiff's own negligence contributed to her alleged injury in that plaintiff encouraged, approved, ratified, or accepted the actions of which she complains.

CLAIM SIX

Oregon Securities Laws

- (K)** The issues in this claim for relief are the same as those set forth under plaintiff's first, second, third, and fourth claims for relief.

5. OTHER LEGAL ISSUES

[Set forth legal issues, if any.]

6. AMENDMENTS TO PLEADINGS

[Include a statement indicating proposed amendments to the pleadings, if any]

Dated this 29th Day of March, 1998.

PLAINTIFF'S LAW FIRM

DEFENDANTS' LAW FIRM

Attorney for Plaintiff
Oregon State Bar No:

Attorney for Defendants
Oregon State Bar No:

For Court Use Only

The foregoing Pretrial Order is:

_____ Approved as lodged.

_____ Approved as amended by interlineation and the pleadings are amended accordingly.

SO ORDERED this _____ day of _____, 19_____.

JOHN JELDERKS
United States Magistrate Judge